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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,071	10/21/2003	Jonathan T. Gilliam	GIL -01-03	6678

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EXAMINER

VANTERPOOL, LESTER L

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b> 10/690,071	<b>Applicant(s)</b> GILLIAM, JONATHAN T.	
	<b>Examiner</b> Lester L. Vanterpool	<b>Art Unit</b> 3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Specification***

1. The use of the trademark CORDURA has been noted in this application in "Claims 3 and 7". It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 & 7 contains the trademark / trade name CORDURA. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be use properly to identify any particular material or product. A trademark or trade name is

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used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark / trade name is used to identify / describe fabric materials and, accordingly, the identification / description is indefinite.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 2, 8 & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328). Ohlemeyer discloses the holster (30) to accommodate a piece of law enforcement equipment (39), the holster (30) includes the front wall (33) having overlapping edges and attached to the center wall (31) and the back wall (1), and at least two rail straps (9 & 10).

However, Ohlemeyer does not disclose the rail system including at least two adjustable straps positioned above the other one and each strap passing through at least one rail strap to hold the holster in a desired position.

Sperling teaches the rail system includes at least two adjustable straps (5 & 6) positioned above the other (See Figures 1 – 3) and each strap (5 & 6) passing through at least one rail strap (5 & 6) (See Figure 4) to hold the holster (A) in a desired position for the purpose of stabilizing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make each strap passé through at least one rail strap as taught by Sperling with the multi-configurable holster of Ohlemeyer, in order to enhance leveling and stabilizing capabilities.

Regarding claim 2, as stated above in claim 1, Ohlemeyer discloses the quick thumb release (41) having a first and second end to hold a piece of law enforcement equipment (39) in place (Page 2, line 6 – 10). See Figure 1.

Regarding claim 8, as stated above in claim 1, Sperling discloses buckles (17 & 18) affixed to the rails (5 & 6) to adjust the rails (5 & 6) to a desired length. See Figure 3.

Claim 13, Ohlemeyer discloses the front wall having overlapping edges; the center piece (31) of rigid material attached to the front wall (33) and to hold a shape of the holster (30); the back wall (1) attached to the front wall (33) and the center piece (31) of rigid material.

However, Ohlemeyer does not disclose at least two rail straps affixed to the front wall; and, the rail system that includes at least two adjustable straps, on strap being

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positioned above the other one and each strap passing through at least one rail strap to hold the holster in a desired position.

Sperling teaches at least two rail straps (13/15; 14/16) affixed to the front wall (A) (line 89 – 91) (See Figure 3) for the purpose of equally leveling. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least two rail straps as taught by Sperling with the multi-configurable holster of Ohlemeyer in order to enhance product level and angle requirements.

Sperling further teaches the rail system that includes at least two adjustable straps (5 & 6), wherein the straps (5 & 6) are positioned above the other one and each strap passing through at least one rail strap (5 & 6) (See Figure 4) to hold the holster (A) in the desired position for the purpose of stabilizing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make each strap passed through at least one rail strap as taught by Sperling with the multi-configurable holster of Ohlemeyer, in order to enhance leveling and stabilizing capabilities.

5. Claims 3 & 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328) as applied to claim 1 above, and further in view of Baruch (U.S. Patent Number U.S. Patent Number 5094376) and in view of Harris et al., (U.S. Patent Number 6336577). Ohlemeyer and Sperling disclose the invention substantially as claimed.

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However, Ohlemeyer and Sperling do not disclose a front wall comprising orthopedic elastic; and, a back wall comprising CORDURA laminated to orthopedic padding.

Baruch teaches the front wall (21) comprising orthopedic elastic (140) (column 9, line 52 – 62) (See Figure 1) for the purpose of provided adequate restraining tension. It would have been obvious to one having ordinary skills in the art at the time the invention was made to make the front wall comprising of orthopedic elastic as taught by Baruch with the multi-configurable holster system of Ohlemeyer in order to enhance securing and restraining items.

Furthermore, Harris et al., teaches the back wall (18) comprising of CORDURA laminated to orthopedic padding (78) (column 2, line 27 – 34) for the purpose of provided durability. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the back wall as taught by Harris et al., with the multi-configurable holster system of Ohlemeyer in order to enhance product durability and reliability.

Regarding claim 7, as stated above in claim 1, Harris et al., discloses at least the rear wall (18) comprises CORDURA material (column 2, line 27 – 35).

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328) as applied to claim 1 above, and further in view of Seber (U.S. Patent Number

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5014636) and in view of Murdock et al., (U.S. Patent Number 6834651). Ohlemeyer and Sperling disclose the invention substantially as claimed.

However, Ohlemeyer and Sperling do not disclose nylon binding material attached to the front wall and the rail straps to provide re-enforcement of the rail straps.

Seber teaches nylon binding material attached to the front wall (34) (column 5, line 19 – 23) (See Figure 6) for the purpose of provided re-enforcement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make nylon binding material attached to the front wall as taught by Seber with the multi-configurable holster system of Ohlemeyer in order to enhance product durability.

Murdock et al., teaches nylon binding material attached to the rail straps (30 & 32) to provide re-enforcement of the rail straps (30 & 32) (column 4, line 24 – 29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the nylon binding material attached to the rail straps as taught by Murdock et al., with the multi-configurable holster system of Ohlemeyer in order to enhance product reliability and durability.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328) as applied to claim 1 above, and further in view of Kim (U.S. Patent Number 5586701). Ohlemeyer and Sperling disclose the invention substantially as claimed.

However, Ohlemeyer and Sperling do not disclose a thumb release comprise of hook and loop material to hold a piece of law enforcement equipment in place.



Kim teaches the thumb release (3, 3a, 3b, 4, 4a, & 4b) comprise hook and loop material to hold the piece of law enforcement equipment (5) in place (column 2, line 39 - 57) (See Figures 1 – 9) for the purpose of providing easier user friendly functionality. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the thumb release as taught by Kim with the multi-configurable holster system of Ohlemeyer in order to enhance easier user friendly functionality.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328 as applied to claim 1 above, and further in view of Beletsky et al., (U.S. Patent Publication Number 2002 / 0162865 A1). Ohlemeyer and Sperling disclose the invention substantially as claimed.

However, Ohlemeyer and Sperling do not disclose an edge of the front wall comprising binding.

Beletsky et al., teaches the edge of the front wall (11) comprise of binding (Paragraph 0036) for the purpose of providing adequate durability. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the edge of the front wall as taught by Beletsky et al., with the multi-configurable holster system of Ohlemeyer in order to decrease wear and tear and enhance durability.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number

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1884328) as applied to claim 1 above, and further in view of Spiller (U.S. Patent Publication Number 2002 / 0092138 A1). Ohlemeyer and Sperling disclose the invention substantially as claimed.

However, Ohlemeyer and Sperling do not disclose the rails comprising elastic webbing.

Spiller teaches the rails (1) comprise of elastic webbing (Claim 11) for the purpose of providing flexibility. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rails comprise of elastic webbing as taught by Spriller with the multi-configurable holster system of Ohlemeyer in order enhance flexibility.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328) as applied to claim 1 above, and further in view of Wharton (U.S. Patent Number 6691351). Ohlemeyer and Sperling disclose the invention substantially as claimed.

However, Ohlemeyer and Sperling do not disclose a zipper having two ends, each end affixed to a rail.

Wharton teaches the zipper having two ends, each end affixed to the rail (32) (column 6, line 29 – 31) for the purpose of anchoring the zipper. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the zipper having two ends with each end affixed to the rail as taught by Wharton

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with the multi-configurable holster system of Ohlemeyer in order to adequately anchor, secure and retain items.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328) as applied to claim 10 above, and further in view of Rongo et al., (U.S. Patent Number Des. 379396). Ohlemeyer and Sperling disclose the invention substantially as claimed.

However, Ohlemeyer and Sperling do not disclose a redundant buckling system attached to the zipper to prevent the zipper from unzipping during use.

Rongo et al., teaches the redundant buckling system attached to the zipper to prevent the zipper from unzipping during use for the purpose of additional security. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the redundant buckling system as taught by Rongo et al., with the multi-configurable holster system of Ohlemeyer in order to ensure security.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlemeyer (U.S. Patent Number 2396118) in view of Sperling (U.S. Patent Number 1884328) as applied to claim 1 above, and further in view of Bennett (U.S. Patent Number 4953767). Ohlemeyer and Sperling disclose the invention substantially as claimed. Sperling discloses buckles (17 & 18) attached at ends of the rails (5 & 6).

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However, Ohlemeyer and Sperling do not disclose impact buckles attached at ends of the rails.

Bennett teaches impact buckles (23, 24, 25 & 26) attached at ends of the rails (20 & 21) (column 2, line 61 – 63) (See Figures 2 & 3) for the purpose of provided adequate retaining constraints. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the impact buckles as taught by Bennett with the multi-configurable holster system of Ohlemeyer in order to allow adequately retraining capabilities.

### ***Conclusion***

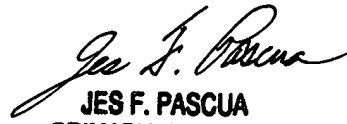
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LLV

  
JES F. PASCUA  
PRIMARY EXAMINER